<div align="center">REMARKS</div>

Claims 1-15 are pending in the Application.

Claims 1-15 stand rejected.

The Disclosure is objected to for informalities.

Claims 1, 4, 6, and 11 are currently amended.

Applicants respectfully assert that all remaining claims are allowable and Applicants respectfully request the Examiner to withdraw all outstanding rejections.

<div align="center">**OBJECTIONS TO DISCLOSURE AND DRAWINGS**</div>

The Examiner objects to the Disclosure because "it is not clearly indicated where [356] exists on the figures (pg 11, line 26)." Office Action, 09/09/2004, ¶ 3. Further, "the Examiner did not receive a copy of this figure." *Id.*

In a previous Office Action, the Examiner raised the same objection that "it is not clearly indicated where [356] exists on the figures (pg 11, line 26)." In response to this previous objection, Applicant responded that the reference to item 356 in the Specification was a typographical error. Reply, 06/30/2004, page 11. Further, Applicants corrected the Specification's mistaken reference to item [356] so that the Specification text corresponds to Figure 3b. The Applicants did not change Figure 3b in response to the objection; therefore, no copy of the figure was forwarded with the Amendment. *See* Reply, 06/30/2004. However, in response to the repeated objection to the disclosure, a copy of the original Figure 3b is enclosed herein.

<div align="center">**REJECTIONS UNDER 35 U.S.C. § 102**</div>

Claims 1-2, 4, 6-7, 9-13, and 15 stand rejected under 35 U.S.C. § 102(e) as anticipated by *Pistriotto* (U.S. Patent No. 6,138,162).

Claim 1 has been amended to recite "interrogating a directory comprising <u>proxy server protocol</u> data for each end-user of said IP network." *Pistriotto* does not disclose this element. Rather than interrogating a <u>directory</u> comprising proxy server <u>protocol data</u>, *Pistriotto* discloses accessing a table containing IDs used to determine which agent should

serve a GET request. *Pistriotto*, col. 7, lines 4-6. Therefore, rather than accessing proxy server protocol data, *Pistriotto's* system examines "category IDs" for transmitted packets. *Id*. Example category IDs include "News:National" and "Entertainment: Variety News," *See Pistriotto*, FIG 3B. Such categories do not contain proxy server protocol data. Therefore, *Pistriotto* does not disclose interrogating a directory comprising proxy server protocol data. Rather, Applicant suggests that *Pistriotto* requires that clients and servers use the same proxy server protocol. Consequently, claim 1's steps for interrogating a "directory comprising proxy server protocol data" are undisclosed in *Pistriotto*.

In addition to not disclosing all elements of claim 1, *Pistriotto* teaches away from claim 1 by distinguishing the *Pistriotto* invention from "sniffers." According to *Pistriotto*, "sniffers" capture data packets and decode them to show protocol data. *Pistriotto*, col. 4, lines 4-6. Further, sniffers examine "the protocol content at lower levels." (emphasis added) *Pistriotto*, col. 7, lines 14-16. In contrast, according to *Pistriotto*, the caching proxy server examines the category ID, which is a "different element of the packet." *Pistriotto* col. 7, lines 16-17. Therefore, by distinguishing the *Pistriotto* invention from sniffers, *Pistriotto* teaches away from claim 1's interrogating a directory comprising proxy server protocol and retrieving parameters associated with said proxy server protocol data. This teaching away by *Pistriotto* is further evidence that *Pistriotto* does not anticipate claim 1.

Claim 2 depends from claim 1 with the additional step of creating the directory comprising proxy server protocol data for each end-user of said IP network. As discussed with regard to claim 1, *Pistriotto* does not disclose a directory comprising proxy server protocol data. Further, *Pistriotto* does not disclose the creation of a directory containing such data. Therefore, *Pistriotto* does not anticipate claim 2.

Claim 4 depends from claim 1 with additional limitations that the retrieving step comprises obtaining leading data from said client application having issued said access request for said end-user; parsing said leading data, determining a protocol said client application is currently using, interrogating said directory at an entry corresponding to said first end-user; retrieving parameters associated with said protocol, and executing said protocol in accordance with said parameters associated with said protocol. As discussed

above with reference to claim 1, *Pistriotto* does not disclose determining a client's proxy server protocol. Rather, *Pistriotto* distinguishes its invention from "sniffers" by stating "this operation is different than the function of a sniffer because a sniffer examines the protocol content at lower levels, node addresses, destination class." *Pistriotto*, col. 7, lines 13-16. Rather than <u>determining a protocol</u> a client is using, *Pistriotto* is "examining a different element of the packet, the category id." *Pistriotto*, col. 7, lines 16-18. Therefore, *Pistriotto* does not anticipate claim 4.

Claims 6 and 11 stand rejected "for the same reason as the rejection to claim 1." Office Action, 09/09/2004, ¶ 9. Claims 6 and 11 are currently amended and recite elements similar to those of amended claim 1. For the reasons discussed above with respect to claim 1, *Pistriotto* does not anticipate claim 6 or 11.

Claims 7 and 12 stand rejected "for the same reason as the rejection to claim 2." Office Action, 09/09/2004, ¶ 10. For the reasons discussed above with respect to claim 2, *Pistriotto* does not anticipate claim 7 or 12.

Claims 9 and 14 stand rejected "for the same reason as the rejection to claim 2." Office Action, 09/09/2004, ¶ 11. For the reasons discussed above with respect to claim 2, *Pistriotto* does not anticipate claim 9 or 14.

In summary, *Pistriotto* does not recite all limitations of claim 1-2, 4, 6-7, 9-13, or 15. Therefore, theses claims are allowable under 35 U.S.C. § 102 over *Pistriotto*.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 3, 5, 8, 10, 13 and 15 stand rejected as obvious under § 103 (a). Claims 3, 8, and 13 stand rejected as obvious over *Pistriotto* in view of "Official Notice." Claims 5, 10, and 15 stand rejected as obvious over *Pistriotto* in view of *Banavar* (U.S. Patent No. 6,662,206).

The basic test for nonobvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would not have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere & Co.*, 383 U.S. 1

(1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) a determination of the scope and contents of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art.

Determining Scope and Content of Prior Art

In determining the scope and content of the prior art, the Examiner must first consider the nature of the problem on which the inventor was working. Once this has been established, the Examiner must select, for purposes of comparing and contrasting with the claims at issue, prior art references which are reasonably pertinent to that problem (the inventor's field of endeavor). *See Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 30 U.S.P.Q.2d 1377, 1379 (Fed. Cir. 1994). In selecting references, hindsight must be avoided at all costs.

The present invention relates to methods of providing transparency in a gateway of an IP network by interrogating a directory for proxy server protocol data, retrieving parameters associated with the proxy server protocol data, accessing an application server in accordance with retrieved parameters, and relaying data between the client application and application server. The parameters are retrieved in response to an access request from a client application of a first end-user. The Specification of the present invention lists advantages of not requiring client applications to be gateway-aware for accessing external resources located beyond a gateway of an IP network. Specification, page 8, lines 6-8.

Pistriotto relates to a system for directing a client request through a caching proxy server based on a category ID sent with the request. Six agents operate on a caching proxy server. *Pistriotto*, col. 6, lines 59-61. When a GET request is received by the caching proxy server, the category ID of the request is examined to determine which of the six agents should serve the request. *Pistriotto*, col. 7, lines 11-13. A passthrough agent on the caching proxy server may transmit the request to a destination computer, if the caching proxy server determines that it is necessary. *Pistriotto*, col. 8, lines 24-26

Banavar relates to techniques for the delivery of a stream of events from an information producer to an information consumer. *Banavar*, col. 1, lines 15-18. *Banavar*

discloses a system for providing information subscribers with improved event messages. *Banavar*, Abstract. Subscribers specify rules that are designed to allow shorter message streams in the event of a temporary loss to a message stream. *Id.*

Differences Between Prior Art and Claims

The second step within the test described in *Graham* is to ascertain the differences between the cited prior art and the claims at issue. A *prima facie* showing of obviousness requires the Examiner to establish that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention. The showings must be clear and particular. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

Pistriotto and the presently claimed subject matter are fundamentally different because each addresses distinguishable issues. *Pistriotto* relates to proxy cache servers that examine the category IDs of GET requests to determine which of six agents should serve the GET request. In contrast, the subject matter of the present invention promotes the idea that a client should not be affected by the solutions adopted to administrate and run a network. Specification, page 12, lines 19-21. For example, the subject matter of the present invention eliminates the need for a client to be "socksified" before communicating with a SOCKS server. Specification, page 13, lines 1-6. Therefore, the present invention is concerned with proxy server protocols and reducing the need to alter clients before using proxy servers while *Pistriotto* relates to determining which agent on a proxy server should handle a particular request. In addition to these fundamental differences, not all limitations of the claims are found in *Pistriotto*, either alone or in combination with "Official Notice" or *Banavar*.

Claim 3 stands rejected over *Pistriotto* in view of "Official Notice." Office Action, 09/09/2004, ¶ 13. Claim 3 depends from claim 1 with additional limitations for updating the directory of the end-users. The step of updating the directory includes the steps of: disabling entries for end-users that disconnect, enabling entries for those of said end-users that connect, and updating said entries of said end-users comprising dynamic parameters whenever said parameters are changing while connected.

For claim 3's elements "enabling entries for those of said end-users that connect" the Examiner cites to text from *Pistriotto* that describes formats, flow control, and event

sequences for GET requests by clients. *See Pistriotto*, col. 8, lines 16-22. In summary, the cited text describes an ID to determine which agent within a proxy cache server should handle a request. *See Pistriotto*, col. 8, lines 15-44. The cited text does not disclose <u>updating</u> a directory of end-users wherein the directory comprises proxy server protocol data for each end-user. Instead, the cited portion, for example, describes <u>transmitting</u> a GET request, <u>checking</u> the IP address to see if it is stored, and possibly transmitting the request to a destination machine. *Pistriotto*, Fig. 5b, col. 8, lines 22-28.

Likewise, nothing in the cited portion discloses claim 3's "<u>updating said entries</u> of said end-users comprising dynamic parameters whenever said parameters are changing while connected." *See* Office Action, 09/09/2004, ¶ 15. Instead of any updating, the cited portion describes using IDs from a GET request to determine which agent within a proxy cache server should handle requests. Nothing in the cited portion discloses <u>updating</u> entries in a directory comprising <u>proxy server protocol</u> data for each end-user of said IP network.

Further, other elements of claim 3 are not disclosed by *Pistriotto*. Specifically, as the Examiner recognizes, *Pistriotto* does not disclose claim 3's "<u>disabling entries</u> for those of said end-users that disconnect." *See* Office Action, 09/09/2004, ¶ 15. For this element, the Examiner cites to "Official Notice" that such concepts are "well known and expected in the art." *Id.* Applicant does not agree with the Examiner's implication that "disabling entries" is equivalent to not "keeping the entries open." *Id.* Further, Applicant does not agree that such connections "typically time out," "close itself out," or that such operations are typically done or monitored through a timer. The Examiner's statements are without any objective support, and amount to merely his own personal opinions. Moreover, since entries may be needed later in such types of systems, it is actually more likely that such entries will not be disabled. Therefore, the Examiner's use of "Official Notice" in combination with *Pistriotto* does not render claim 3 obvious.

In summary, the prior art and claim 3 are different because the prior art references, taken alone or in combination, do not recite every limitation of claim 3. Therefore, claim 3 is patentable over the cited references.

Claim 8 and 13 stand rejected "for the same reasons as the rejection to claim 3 above." Office Action, mailed 09/09/2004, ¶ 16. For at least the reasons cited above with respect to claim 3, claims 8 and 13 are patentable over *Pistriotto* in view of the Examiner's "Official Notice."

Claims 5, 10, and 15 stand rejected under § 103(a) as obvious over *Pistriotto* in view of *Banavar*. These rejections are traversed. *Banavar's* disclosure is distinguishable from the claims of the present invention. The *Banavar* disclosure is fundamentally different than the subject matter of the present invention. *Banavar* relates to publish/subscribe systems and "middleware" that collect, filter, and transform messages for providing to subscribers. *Banavar*, col. 1, lines 24-28. The *Banavar* system is designed to reduce network traffic following an interruption in downloading by providing ways to recover from the interruption. *Banavar*, col. 2, lines 3-6. During an interruption of downloading, a portion of messages is not received by the subscriber. In such an event, rather than downloading the entirety of missed messages, *Banavar'* invention may transmit a summary of the missed messages. *Banavar*, col. 2, lines 8-26. Transmitting a summary of the message rather than the message reduces network traffic. Therefore, the *Banavar* disclosure is fundamentally different than the presently claimed subject matter.

In addition to fundamental differences between *Banavar* and the claimed subject matter, *Banavar* does not disclose all the elements of any claim. Specifically, the cited portion of *Banavar* does not disclose claim 5's "informing said end-user of said client application that a server application is unavailable if a link to said application server is not established. *See* Office Action, 09/09/2004 (citing col. 2, lines 27-40, col. 1, lines 55-67, col. 8, lines 1-10). Rather, the cited portions describe that a subscriber may periodically disconnect causing a loss of event messages. *Banavar*, col. 8, line 1-3. Further, according to *Banavar*, "any known session outage notification technique" "allows the sequencer(s) to detect when the connection has been broken." (emphasis added) *Banavar*, col. 8, lines 3-6. *Banavar* merely mentions that a sequencer may detect when a connection has been broken or re-established. *Banavar*, col. 8, lines 4-7. A sequencer that may detect when a connection to a network is lost is patentably distinguishable from informing an end-user that a server application is unavailable. Therefore, neither *Banavar* nor *Pistriotto*, taken alone or in

combination, recite every limitation of claim 5. Consequently, claim 5 is patentable over *Pistriotto* in view of *Banavar*.

Claims 10 and 15 stand rejected "for the same reason as the rejection to claim 5." Office Action, 09/09/2004, ¶ 21. Claims 10 and 15 recites limitations similar to claim 5. For the reasons discussed above regarding claim 5, claims 10, and 15 are patentable over the cited references.

In summary, there are numerous differences between the cited references and the presently claimed subject matter. For at least the foregoing reasons, Applicants respectfully assert that claims 3, 5, 8, 10, 13, and 15 are allowable over *Pistriotto* in view of *Banavar* or "Official Notice."

Ordinary Skill and Relevant Art

In resolving the level of ordinary skill of the pertinent art, as required by the third step in *Graham*, the Examiner must step backward in time and into the shoes worn by a person of ordinary skill when the invention was unknown and just before it was made. The hypothetical person skilled in the art can summarily be described as one who thinks along lines of conventional wisdom in the art and neither one who undertakes to innovate nor one who has the benefit of hindsight. Thus, neither an examiner, nor a judge, nor a genius in the art at hand, nor even the inventor is such a person skilled in the art.

In order to establish a *prima facie* case of obviousness, it is necessary for the Examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge that one having ordinary skill in the art would have been led to modify or combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300, 1301 (Bd. Pat. App. & Int. 1993); *Ashland Oil, Inc. v. Delta Resins and Refractories, Inc.*, 776 F.2d 281 (Fed. Cir. 1985). The motivation or suggestion to modify or combine references must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 47 U.S.P.Q. 2d 1453, 1458 (Fed. Cir. 1998). The showings must be clear and particular. *In re Dembiczk*, 50 U.S.P.Q.2d 1614, 1617 (Fed.

Cir. 1999). Broad conclusory statements regarding the teachings of multiple references, standing alone, are not evidence. *Id.*

There is no motivation to combine *Pistriotto* and *Banavar*. The Examiner states as motivation that both references deal "with updating the status for a system through real time events occurring in the system." Office Action, 09/09/2004, ¶ 20. These are the Examiner's subjective opinions, unsupported by any facts or objective evidence. One of ordinary skill in the art of proxy servers would not be motivated, at the time the invention was made, to combine the features of *Pistriotto* and *Banavar* to reach the present invention. *Banavar* does not specifically mention using any caching proxy server. Instead, *Banavar* relates to systems for summarizing missing events using event stream interpretations. *Banavar* describes a sequencer that may detect when a connection has been broken. *Banavar*, col. 8, lines 5-9. As discussed above, a sequencer that merely <u>can detect</u> when a connection to a network is lost is patentably distinguishable from <u>informing an end-user</u> that a server application is unavailable. The technologies related to *Pistriotto*, *Banavar*, and the present application are so different that a practitioner inventing a way of providing transparent gateways would not seek to combine the *Pistriotto's* teachings related to directing GET requests with *Banavar's* teachings related to summarizing missing information to reach the subject matter of the present invention.

There are further reasons one of ordinary skill would not combine *Pistriotto* and *Banavar*. Specifically, *Banavar* relates to stock prices, which one of ordinary skill likely would want updated as frequently as possible. *Banavar*, col. 6, lines 5-15. Such considerations regarding the need for timely information (i.e., the latest stock price) make it unlikely that one of ordinary skill in the field of caching proxy servers would modify *Pistriotto* with *Banavar's* features to reach the present invention. Such considerations are further evidence that one of ordinary skill in the art would not be motivated to combine the teachings of *Pistriotto* with the teachings of *Banavar*.

The legal conclusion of obviousness must have a correct factual basis. *See Graham v. John Deere & Co.*, 383 U.S. 1 (1966); *In re Rouffet*, 47 USPQ2d 1453, 1455 (Fed. Cir. 1998). Where the legal conclusion is not supported by facts, it cannot stand. *Id.* A rejection based

on § 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). The patentability of an invention is not to be viewed with hindsight or "viewed after the event." *Goodyear Company v. Ray O Vac Company*, 321 U.S. 275, 279 (1944). The proper inquiry is whether modifying or bringing them together was obvious and not, whether one of ordinary skill, having the invention before him, would find it obvious through hindsight to construct the invention. Accordingly, an Examiner cannot establish obviousness by locating references which describe various aspects of the patent Applicant's invention without also providing evidence of the motivating force which would compel one skilled in the art to do what the patent applicant has done.

In summary, claims 3, 5, 8, 10, 13, and 15 are patentable over *Pistriotto*, "Official Notice," and *Banavar* taken alone or in combination. The cited references do not recite all limitations of any claims. The Examiner's rejections do not rest on a factual basis. The rejections are based upon hindsight reconstruction by selectively picking elements from *Pistriotto* and *Banavar*. There is no motivation to combine *Pistriotto* and *Banavar*. Therefore, the rejected claims are allowable over the cited references, taken alone or in combination, under 35 U.S.C. § 103.
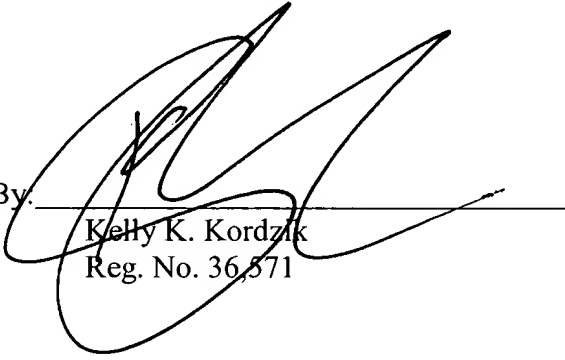
CONCLUSION

In consideration of the foregoing, Applicants assert that all remaining claims are in condition for allowance. Applicants respectfully request an early allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below-listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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